

Matthew Franklin Jaksa (CA State Bar No. 248072)
HOLME ROBERTS & OWEN LLP
560 Mission Street, 25th Floor
San Francisco, CA 94105-2994
Telephone: (415) 268-2000
Facsimile: (415) 268-1999
Email: matt.jaksa@hro.com

Attorneys for Plaintiffs,
LAFACE RECORDS LLC; ELEKTRA
ENTERTAINMENT GROUP INC.; UMG
RECORDINGS, INC.; and WARNER
BROS. RECORDS INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

LAFACE RECORDS LLC, a Delaware limited liability company; ELEKTRA ENTERTAINMENT GROUP INC., a Delaware corporation; UMG RECORDINGS, INC., a Delaware corporation; and WARNER BROS. RECORDS INC., a Delaware corporation.

Plaintiffs.

V.

JOHN DOE #4,
Defendant.

CASE NO. 4:07-CV-04847-SBA

Honorable Saundra B. Armstrong

**EX PARTE APPLICATION TO EXTEND
TIME TO SERVE DEFENDANT AND
[PROPOSED] ORDER**

1 Plaintiffs respectfully request, pursuant to the Federal Rules of Civil Procedure, Rules 4(m)
2 and 6(b)(1)(A), that the Court grant an additional 90 days to serve Defendant with the Summons and
3 Complaint. As further explained below, Plaintiffs believe they have discovered the identity of the
4 Doe defendant in this case and have initiated settlement discussions; Plaintiffs thus seek additional
5 time to effectuate service in the event the parties do not settle and Plaintiffs file a First Amended
6 Complaint naming Defendant individually. In support of their request, Plaintiffs state as follows:

7 1. The current deadline for service of process is January 18, 2008. The initial
8 case management conference is set for April 9, 2008, at 2:45 p.m., as continued by the Court's Order
9 of January 4, 2008 upon Plaintiffs' request.

10 2. Plaintiffs filed their Complaint for Copyright Infringement against Defendant
11 John Doe #4 ("Defendant") on September 20, 2007. Plaintiffs did not have sufficient identifying
12 information to name Defendant in the Complaint, but were able to identify Defendant by the Internet
13 Protocol address assigned to Defendant by Defendant's Internet Service Provider ("ISP") – here, San
14 Francisco State University.

15 3. In order to determine Defendant's true name and identity, Plaintiffs filed their
16 *Ex Parte* Application for Leave to Take Immediate Discovery on September 20, 2007, requesting
17 that the Court enter an Order allowing Plaintiffs to serve a Rule 45 subpoena on the ISP.

18 4. The Court entered an Order for Leave to take Immediate Discovery on
19 October 4, 2007, which was promptly served upon the ISP along with a Rule 45 subpoena. On
20 November 16, 2007, the ISP responded to Plaintiffs' subpoena, identifying Jennifer Lynn Glass and
21 providing contact information including her telephone number and address.

22 5. Upon receipt of this information from the ISP, Plaintiffs sent a letter to Ms.
23 Glass notifying her of their claims for copyright infringement and encouraging her to make contact
24 to attempt to amicably resolve this matter. That letter was returned undelivered. Since that time
25 Plaintiffs have made further attempts to reach Ms. Glass and finally were able to speak with her by
26 telephone regarding potential settlement options on January 2, 2008, and forwarded to her written
27 notification of their claim.

1 6. Plaintiffs wish to give Ms. Glass a reasonable period of time to conclude
 2 negotiations aimed at resolving this case and should they fail to do so are prepared to file a First
 3 Amended Complaint naming her as an individual defendant.

4 7. Given the circumstances of this case, Plaintiffs respectfully request an
 5 additional 90 days to effectuate service.

6 8. Plaintiffs submit that their efforts to give written notice to Ms. Glass of their
 7 claim and subsequent efforts to resolve the case without further litigation constitute good cause for
 8 any delay in perfecting service. *See Ritts v. Dealers Alliance Credit Corp.*, 989 F. Supp. 1475, 1479
 9 (N.D. Ga. 1997) (stating good cause standard for service extensions). This Court has discretion to
 10 enlarge the time to serve even where there is no good cause shown. *Henderson v. United States*, 517
 11 U.S. 654, 658 n. 5 (1996). Here, Plaintiffs have acted in good faith to try to settle this matter with
 12 Ms. Glass without potentially damaging her credit by naming her in the suit as well as attempting to
 13 avoid the cost of further litigation for both parties. Moreover, unlike a traditional case in which the
 14 defendant is known by name and efforts to serve can begin immediately after filing the complaint, in
 15 this case Plaintiffs first had to obtain the identity of the defendant through the subpoena to the ISP.

16 9. Because the copyright infringements here occurred in 2007, the three-year
 17 limitations period for these claims has not expired. *See 17 U.S.C. § 507(b)* (2000). There can thus
 18 be no prejudice to Defendant from any delay in serving the Complaint.

19 10. Plaintiffs will provide Defendant with a copy of this request and any Order
 20 concerning this request when service of process occurs.

21 Dated: January 16, 2008

HOLME ROBERTS & OWEN LLP

22
 23
 24 By: /s/ Matthew Franklin Jaksa
 25 MATTHEW FRANKLIN JAKSA
 26 Attorney for Plaintiffs
 27
 28

ORDER

Good cause having been shown:

IT IS ORDERED that, pursuant to the Federal Rules of Civil Procedure, Rules 4(m) and 6(b)(1), Plaintiffs' time to serve the Summons and Complaint on Defendant be extended to April 17, 2008.

Dated: _____

By: _____
Honorable Saundra B. Armstrong
United States District Judge